



**OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000**

**PERSONNEL AND
READINESS**

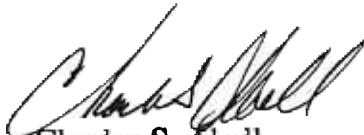
APR 27 2004

**MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (M&RA)
ASSISTANT SECRETARY OF THE NAVY (M&RA)
ASSISTANT SECRETARY OF THE AIR FORCE (MR)
DIRECTOR, DEFENSE FINANCE AND ACCOUNTING
SERVICE**

**SUBJECT: Directive Type Memorandum; Changes in Survivor Benefit Plan (SBP)
Enacted by Public Law 108-136, National Defense Authorization Act
Concurrent for Fiscal Year 2004**

The attachments to this memorandum provide uniform implementing guidance for changes in the Survivor Benefit Plan enacted by sections 644, 645, of the FY 2004 NDAA and by section 101, Public Law 108-183, December 16, 2003 (Veterans Benefits Act of 2003).

The guidance prescribes criteria and procedures to identify qualified deaths for which new benefits may be payable, identify any newly qualified annuitants related to those deaths, and determine what benefits are payable.


Charles S. Abell
Principal Deputy

**Attachment:
As stated**

**cc:
Commandant (G-HR), U.S. Coast Guard
Director, Division of Commissioned Personnel, U.S. Public Health Service
Director, National Oceanic and Atmospheric Administration Corps**

Implementing Policies, Procedures, and Responsibilities
Section 644, National Defense Authorization Act for Fiscal Year 2004,
P.L. 108-136, November 24, 2003
Expanded Survivor Benefits For Inactive Duty Training Deaths

General

Section 644, National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, November 24, 2003, provides benefits under the Survivor Benefit Plan (SBP) for the qualified annuitant of a reserve component member not otherwise covered under 10 U.S.C. 1448(f)(1)(A) who dies while performing inactive duty training and the death is determined to have occurred in line of duty.

Section 644 applies to deaths that occur on or after September 10, 2001.

The following guidance specifically pertains to the changes in the SBP Program resulting from section 644 and should not be considered comprehensive guidance for the entire Program. Policy pertaining to unchanged provisions of the law remains in effect unless otherwise noted herein.

Qualified Deaths

Benefits may be payable under Section 1448(f)(1)(B) of title 10, United States Code, when a member dies while performing inactive duty training and the death is determined to be in line of duty.

The term “inactive duty training”, as defined in Section 206(22) of title 37, United States Code, includes:

- (1) traveling directly to or from the place at which such duty is performed; or
- (2) remaining overnight, immediately before the commencement of inactive-duty training; or
- (3) remaining overnight between successive periods of inactive-duty training, at or in the vicinity of the site of the inactive-duty training, if the site of the inactive-duty training is outside reasonable commuting distance of the member’s residence.
- (4) serving on funeral honors duty under Section 12503 of title 10, United States Code or Section 115 of title 32, United States Code, to include:
 - (i) traveling to or from the place at which the member was to so serve; or
 - (ii) remaining overnight at or in the vicinity of that place immediately before so serving, if the place is outside reasonable commuting distance from the member’s residence.

Thus, under this provision, effective for deaths occurring on or after September 10, 2001, an immediate Reserve Component SBP annuity may be payable in the event of the death of a reserve component member who is not retirement eligible and whose death is determined to be **in line of duty**, as prescribed below, while performing inactive duty training.

The death of a reserve component member who is not retirement eligible and whose death is determined to have occurred **not in line of duty** does not qualify under this provision.

Qualified Annuitants

Consistent with section 1448(f) of title 10, United States Code, an RC-SBP annuity under this provision of law is payable to a qualified annuitant in the following sequence:

- (1) to the member's former spouse if the member was required under a court order or spousal agreement to provide an annuity to the former spouse upon becoming eligible to participate in the Reserve Component SBP or if the member has made an election to provide an annuity to the former spouse.
- (2) to the surviving spouse.
- (3) to the surviving eligible dependent children if there is no surviving spouse or if the surviving spouse subsequently dies. (**Note:** the dependent child is not a qualified annuitant if the surviving spouse loses entitlement to the annuity for a reason other than death.)

Annuity Amounts

The annuity payable for a death that occurred while performing inactive duty training under this provision is computed in the same manner as an annuity payable under 10 U.S.C. 1448(f)(1)(A).

No Supplemental SBP (SSBP) benefits will be paid under this provision to a surviving spouse of a member who dies while performing inactive duty training. SSBP benefits prescribed under subchapter III of chapter 73, title 10, United States Code do not apply when a member dies while performing inactive duty training.

Line of Duty Determinations

For purposes of determining eligibility for SBP benefits under section 1448(f)(1)(B) of title 10, United States Code, a service member's death will generally be considered to have occurred in line of duty unless: (1) the death occurred while the member was not serving on inactive duty training, (2) the death was the result of the member's own intentional misconduct or willful negligence, or (3) the death occurred during a period of unauthorized absence.

For purposes of this section, the military service concerned will make a written finding as to whether a member's death on or after September 10, 2001, was in the line of duty while the member was performing inactive duty training. The written finding must describe the circumstances under which the member died, and it must also address whether the death was caused by the member's own intentional misconduct or willful negligence and whether the death occurred during a period of unauthorized absence.

Responsibilities

The Secretary of the Military Department concerned shall identify and review the circumstances of all reserve component deaths that occurred while the member was performing inactive duty in the line of duty on or after September 10, 2001, and determine the benefits applicable under section 644 of the National Defense Authorization Act for Fiscal Year 2004, P.L. 108-136.

Consistent with this new authority, the Defense Finance and Accounting Service (DFAS) shall pay annuities to qualified beneficiaries in relation to qualified deaths.

Implementing Policies, Procedures, and Responsibilities
Section 645(a), National Defense Authorization Act for Fiscal Year 2004,
P.L. 108-136, November 24, 2003
Expanded Benefits for Active Duty Deaths

General

Section 645(a), National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, November 24, 2003, amends section 1448(d) of title 10, United States Code, to provide for expanded beneficiary coverage under the Survivor Benefit Plan (SBP) with respect to the qualified dependent children of an eligible member who dies while serving on active duty. The term “active duty” is defined in section 101(d)(1) of title 10, United States Code. Reserve component members on active duty are included whether or not their orders specify a period of more than 30 days.

Under Section 645(a), benefit options for children more closely parallel the options available upon retirement.

The following guidance specifically pertains to the changes in the SBP Program resulting from section 645(a) and should not be considered comprehensive guidance for the entire Program. Policy pertaining to unchanged provisions of the law remains in effect unless otherwise noted herein.

Qualified Deaths

A qualified death is any death on active duty of a member where an annuity was payable as stated under the provisions of law, for deaths that occurred on active duty, as applicable on the date of death.

This includes all deaths that occur on active duty and the member is retirement eligible regardless of the date of death, as well as the death of a member who died on active duty, in the line of duty, after September 11, 2001 who was not retirement eligible.

Benefits Which May Apply

For the qualified death of a member, regardless of the date of death, a member’s eligible dependent children now qualify, under section 1448(d)(2)(A), to receive an annuity if there is no eligible surviving spouse; or the eligible surviving spouse subsequently dies, or otherwise becomes ineligible for the annuity. The circumstances under which a surviving spouse otherwise becomes ineligible are remarrying before age 55 or feloniously causing the member’s death.

With respect to a death that occurs on or after November 24, 2003, a child only annuity may be provided, under 1448(d)(2)(B), for eligible dependent children, even though there is an eligible surviving spouse, if the Secretary of the Military Department concerned, after consultation with the surviving spouse, determines that it is appropriate to provide an annuity for the dependent children instead of an annuity for the surviving spouse.

The effective date for annuity payments provided under section 645(a) is November 24, 2003 or the date of the member's death, whichever is later. No other retroactive payments are authorized.

Annuity Amounts

Section 645(a) does not change how an annuity is computed for the qualifying dependent children of a member who dies while serving on active duty.

Responsibilities

Services:

(1) The Secretary of the Military Department concerned should, to the extent practicable, identify the population of surviving spouses when all of the following criteria are met:

- (i) the surviving spouse received an annuity under Section 1448(d)(1) of title 10, United States Code
- (ii) the member died in line of duty, or not in line of duty but was retirement-eligible as described in section 1448(d)(1)(A) of title 10, United States Code
- (iii) the surviving spouse has died subsequent to the member's death or otherwise lost eligibility for SBP due to remarrying before age 55 or by feloniously causing the member's death.

A surviving spouse who meets the criteria in (1) above, or potential eligible dependent children, should be notified to determine if there are eligible dependent children available to receive the annuity under section 1448(d)(2)(A) of title 10, United States Code. Payments to qualified dependent children may be paid retroactive to November 24, 2003, or the date the surviving spouse loses eligibility for the SBP annuity, whichever is later. In addition, each Service should develop procedures to inform surviving spouses of this provision of law.

(2) The Secretary of the Military Department concerned should, to the extent practicable, identify the population of surviving spouses to whom all of the following criteria apply:

- (i) is the surviving spouse of a member who died on or after November 24, 2003, while serving on active duty
- (ii) the member died in line of duty, or not in line of duty but was retirement-eligible as described in section 1448(d)(1)(A) of title 10, United States Code
- (iii) the member had eligible dependent children on the date of death

Surviving spouses who meet the criteria in (2) above, should be notified of the opportunity to change, retroactive to November 24, 2003, previously elected spouse or spouse and child coverage to child only coverage under section 1448(d)(2)(B) of title 10, United States Code. Payments to qualified dependent children may be paid retroactive to November 24, 2003.

DFAS:

Assist the Services in identifying the population affected by the provisions of Section 645(a).

Establish and pay annuities to qualified survivors for qualified deaths, as prescribed herein.

In the case of an election that is retroactively changed due to section 645(a), determine amounts already paid to the surviving spouse and consider those payments as if they were made to the dependent children.

OSD:

Develop a uniform method for electing claims under these provisions. In the interim, the Services may use the following SAMPLE Spouse Statement developed by the Army, to allow the Secretary concerned to elect the child only option with respect to an election under 1448(d)(2)(B):

SPOUSE STATEMENT OF DESIRED SBP ELECTION
ACTIVE DUTY DEATH

After review of the Survivor Benefit Plan (SBP) options available to me, and personal counseling provided, I, _____, surviving spouse of _____, SSN: _____, desire the following SBP election on behalf of my husband/wife:

____ 1. **Spouse.** I understand that Spouse SBP is offset dollar for dollar by Spouse Dependency & Indemnity Compensation (DIC) received.

____ 2. **Children Only.** I request the Secretary of the _____ to make an election under 1448(d)(2)(B) to authorize all of my spouse's eligible children to receive an equal share of the SBP annuity. I understand by making this request, I hereby permanently waive my own entitlement to SBP payments based on my spouse's military service. All eligible children will receive the annuity until age 18 or age 22 if a full-time unmarried student, or forever if the child is incapable of self-support due to a condition incurred before age 18, or age 22, if an unmarried full-time student, until all children are ineligible.

(Spouse Signature & Date)

Implementing Policies, Procedures, and Responsibilities
Section 645(b), National Defense Authorization Act for Fiscal Year 2004
P.L. 108-136, November 24, 2003
Limitations on Certain Insurable Interest and SSBP Elections by
Disability Retirees

General

Section 645(b), National Defense Act for Fiscal Year 2004, Public Law 108-136, November 24, 2003, amends section 1448(d) of title 10, United States Code, to provide restrictions on the payment to a beneficiary for certain elections made under the Survivor Benefit Plan (SBP) and Supplemental Survivor Benefit Plan (SSBP).

Certain insurable interest (10 U.S.C. 1448(b)(1)), and SSBP (10 U.S.C. 1458) elections shall be considered void when an eligible member who retired, on or after November 24, 2003, under chapter 61 (Retirement or Separation for Disability) of title 10, United States Code, dies within one year of retirement, and the cause of death was related to the disability that was the basis for the retirement.

The following guidance specifically pertains to the changes in the SBP Program resulting from section 645(b) and should not be considered comprehensive guidance for the entire Program. Policy pertaining to unchanged provisions of the law remains in effect unless otherwise noted herein.

Affected Elections

The new authority impacts certain insurable interest elections (10 U.S.C. 1448(b)(1)) (see note) and SSBP (10 U.S.C. 1458) elections made by an eligible member, who retired under chapter 61 (Retirement or Separation for Disability) of title 10, United States Code, on or after November 24, 2003, and who dies within one year of retirement and the death was related to the disability that was the basis for the retirement.

Note: This restriction does not apply to an insurable interest election for a person who is a qualified dependent of the member as defined in section 1072(2) of title 10, United States Code.

Disposition of Premiums Paid

Any premiums paid for coverage that becomes void due to these provisions will be refunded to the named beneficiary of such election.

Responsibilities

Defense Finance and Accounting Service:

- (1) Identify, with respect to retirements effective on or after November 24, 2003, member records when all of the following criteria are met:
 - (i) the member was retired under the provisions of Chapter 61 of title 10, United States Code
 - (ii) the member died within one year of the effective date of the retirement
 - (iii) the member had elected insurable interest coverage (not for a qualified dependent) or Supplemental SBP coverage.
- (2) Notify the Service concerned of all accounts identified under paragraph (1) that meet all three criteria.
- (3) Upon receiving Certification of Cause of Death from the Service concerned, establish the annuity or refund the premiums as appropriate.

Military Services:

- (1) The Secretary of the Military Department concerned shall, upon notification by DFAS that a record has been identified, as described in the previous paragraph, compare the findings of the Physical Evaluation Board that specifies the disabilities of the member at the time of retirement with the cause of death specified on the death certificate to determine if such cause of death was related directly or substantially to the disability for which the member was retired. Upon making such comparison, the Service concerned shall prepare a certification (see sample below) and submit to DFAS for action as appropriate.
- (2) Notify the affected spouse or insurable interest beneficiary of the determination of eligibility for benefits.

SAMPLE CERTIFICATION OF CAUSE OF DEATH

Purpose: This certification is used to determine the disposition of an insurable interest or Supplemental SBP election made by a member who is retired under Chapter 61 of title 10, United States Code who died of a cause related to the disability within one year of the date of retirement.

This certification pertains to the death of **(name of member, social security number)** who retired on **(date of retirement)** and died on **(date of death)**.

The above named member was retired for the following disability: **(name of disability and 4 digit VA code)**. The cause of death, according to the death certificate, was **(cause of death on death certificate)**.

This is to certify that this office has reviewed the cause of death in comparison to the disability for which the member was retired and concluded that the cause of death **(was/was not)** related to the disability for which the member was retired under Chapter 61 of title 10, United States Code.

Implementing Policies, Procedures, and Responsibilities
Section 645(c), National Defense Authorization Act for Fiscal Year 2004,
P.L. 108-136, November 24, 2003

Insurable Interest Annuity Deemed Elections for Active Duty Deaths

General

Section 645(c), National Defense Authorization Act for Fiscal Year 2004, Public Law 108-136, November 24, 2003, amends section 1448(d) of title 10, United States Code, to allow the Secretary concerned to pay an annuity to a natural person who has an insurable interest (10 U.S.C. 1448(b)(1)), if no other annuity is payable on behalf of the member. The Secretary concerned may pay the annuity only in the case of a dependent defined under section 1072(2) of title 10, United States Code. This is an expanded beneficiary option under the Survivor Benefit Plan (SBP) for qualified dependents of eligible members who die on active duty on or after November 24, 2003. The term ‘active duty’ is given the meaning described under section 101(d) of title 10, United States Code.

The following guidance specifically pertains to the changes in the SBP Program resulting from section 645(c) and should not be considered comprehensive guidance for the entire Program. Policy pertaining to unchanged provisions of the law remains in effect unless otherwise noted herein.

Qualified Deaths

A qualified death under Section 645(c) is a death of a member serving on active duty, which occurred on or after November 24, 2003, that would have provided an SBP annuity to a surviving spouse under section 1448(d)(1), to a dependent child under section 1448(d)(2), or to a former spouse under section 1448(d)(3) of title 10, United States Code, but for the fact that there is no beneficiary eligible to receive such annuity on the date the member dies.

Qualified Annuitants

Under Section 645(c), an eligible annuitant is a person with an insurable interest who qualifies as a dependent under section 1072(2) of title 10, United States Code. An individual who is seeking the annuity must demonstrate that dependency status existed prior to the member’s death in cases where a determination of dependency status had not been submitted to the member’s service prior to the member’s death.

Annuity Amounts

An annuity payable under section 645(c) of the National Defense Authorization Act for Fiscal Year 2004, P.L. 108-136 shall be computed under section 1451(b) of title 10, United States Code as if the member had retired for total disability on the date of death (regardless of line of duty determination) with reductions applied for the cost of insurable interest coverage.

Responsibilities

Services:

(1) The Secretary concerned should determine the identity of qualified dependents eligible for an SBP annuity under section 645(c) of the National Defense Authorization Act for Fiscal Year 2004, P.L. 108-136 when there are no other eligible beneficiaries available to receive the annuity.

(2) Upon identifying potential qualified beneficiaries under Section 645(c), make a deemed election on behalf of the member when it is determined to be appropriate.

DFAS:

Establish an annuity for a beneficiary for whom an election has been deemed under Section 645(c).

**Explanation of
Section 101, Veterans Benefits Act of 2003
P.L. 108-183, December 16, 2003
Effect On SBP Annuity When A Surviving Spouse
Entitled to DIC Remarries After Age 57**

General

Section 101, Veterans Benefits Act of 2003, Public Law 108-183, December 16, 2003, provides that the remarriage of a surviving spouse of a veteran after age 57 shall not bar the payment of Veterans' Dependency and Indemnity Compensation (DIC) to which such spouse was previously entitled.

A surviving spouse who remarried after age 57 but before December 16, 2003, may have DIC payments reinstated if an application is submitted to the Secretary of Veterans Affairs prior to December 16, 2004.

Impact on the Survivor Benefit Plan

Section 101 of the Veterans Benefits Act of 2003, P.L. 109-183, does not impact SBP annuities with respect to DIC. Such SBP annuities will continue to be offset for spouses whose DIC remains payable or is reinstated as a result of remarriage after age 57.

Responsibilities

DFAS should coordinate with the VA to identify persons whose DIC eligibility was restored during the one-year period after enactment of the Veterans Benefits Act of 2003 due to having remarried after age 57, but before enactment of such law, and ensure that the SBP annuity (if any) is offset due to restored receipt of DIC.